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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,058

01/17/2006

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EXAMINER

STUART, COLIN W

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

12/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/531,058	Applicant(s) GRUNDLER ET AL.	
	Examiner COLIN STUART	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/9/09 has been entered.

This action is in response to the request for continued examination filed 11/9/09. As directed by the amendments, claims 11-10 have been cancelled and claims 21-24 have been added. As such, claims 21-24 are pending in the instant application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In regards to claim 21, the language "said humidification chamber having a sprinkler..." in line 1 poses a new matter because the structural element of a 'sprinkler'

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was absent in the original disclosure of the invention. The sprinkling type humidification chamber was disclosed, specifically in paragraph 0052, as a chamber such that the fluid is moved through the gas but no structure of a 'sprinkler' was included in this explanation of the sprinkling type humidification chamber.

Claim 22 is rejected based upon dependency to a rejected claim.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claim 21, the language "said humidification chamber having a sprinkler..." in line 1 is unclear because the examiner cannot ascertain the structural limitations of the 'sprinkler' from the disclosure of a sprinkling type chamber, as discussed above, being a chamber where the fluid moves through the gas. The drawings of the disclosure also do not include any depictions of the sprinkler as the fluid reservoir is connected to the chamber, via pump and filter, by a single line (6). As such, the structure of the sprinkler is being read as a type of inlet into the chamber such that the fluid moves through the gas flow, per explanation of sprinkling type humidification chamber in paragraph 0052.

Claim 22 is rejected based upon dependency to a rejected claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Dobritz (4,010,748).

In regards to claim 21, Dobritz shows a system for heating and humidifying a gas for delivery to a patient which includes a fluid reservoir 9 having a fluid therein (see Fig. 1); a humidification chamber 4 in fluid communication with the fluid reservoir, the chamber having a gas inlet (connection from reference numeral 1 in Fig. 1) and a gas outlet (connection with reference numeral 19 in Fig. 1), the gas inlet being at a lower portion of the chamber, and gas outlet positioned at a level above the gas inlet (see Fig. 1), and the chamber having a filling material 6 therein positioned between the gas inlet and the gas outlet; a pumping means 10 connected to the fluid reservoir and to the chamber, the pumping means for passing fluid from the reservoir into an upper portion of the chamber such that the fluid flows downwardly therefrom and into the filling material (see Fig. 1); a gas supplying means 3 connected to the gas inlet of the chamber, the gas supplying means for passing a gas through the inlet and into the chamber such that the gas flows upwardly through the filling material so as to saturate the gas with fluid and without aerosol formation and such that the gas flows outwardly of the chamber through the outlet and to the patient (see Fig. 1); and a heating means 11

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cooperative with the fluid in the reservoir, the heating means for elevating a temperature of the fluid in the reservoir to a desired level.

In regards to claim 22, Dobritz shows a system which also includes a sprinkler (the connection interface of tube 7 to the chamber 4, see Fig. 1) suitable for delivering the fluid into the filling material in the humidification chamber.

In regards to claim 23, Dobritz shows a system which also includes a surface adjacent in the humidification chamber in the upper portion (defined by the surface of the filling material see Fig. 1) so as to receive the fluid thereon from the sprinkler

In regards to claim 24, Dobritz shows a system in which the humidification chamber and the fluid reservoir are connected by a fluid circuit 7, and the said pumping means connected to the fluid circuit (see Fig. 1).

Response to Arguments

6. Applicant's arguments with respect to claims 11-20 have been considered but are moot in view of the new ground(s) of rejection and because the claims themselves have been cancelled.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following documents are considered to be pertinent art: Milewicz (6,010,118), Jackson (4,026,285), and Koch (6,102,037) are all related to systems for heating and humidifying a gas for delivery to a patient.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLIN STUART whose telephone number is (571)270-7490. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/COLIN STUART/
Examiner, Art Unit 3771

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772